

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

FILED  
CLERK'S OFFICE

Jeffrey J. HENSON and  
Jenny HENSON,

JULY -1 P #27

Plaintiffs,

v.

U.S. DISTRICT COURT  
DISTRICT OF MASS.

CIVIL ACTION  
NO. 04-10514-NG

Alan LeBovidge as COMMISSIONER OF REVENUE for the COMMONWEALTH OF MASSACHUSETTS, CHIEF ADMINISTRATIVE JUSTICE of the MASSACHUSETTS TRIAL COURT, Sheryl PATE, and the UNITED STATES of AMERICA,

Defendants.

DEFENDANTS ALAN LEOVIDGE, AS COMMISSIONER OF REVENUE FOR THE COMMONWEALTH OF MASSACHUSETTS, AND CHIEF ADMINISTRATIVE JUSTICE OF THE MASSACHUSETTS TRIAL COURTS'  
MOTION TO DISMISS

Alan LeBovidge, as the Commissioner of Revenue, and the Chief Administrative Justice of the Trial Court ("State Defendants"), hereby file their Motion to Dismiss Jeffrey J. Henson and Jenny Henson's ("Henson" or "Hensons") Verified Complaint ("Complaint"). As grounds for this motion, the State Defendants state that the complaint should be dismissed for failure to state a claim under Fed. R. Civ. P. 12(b)(1) and 12(b)(6). The complaint against the State Defendants should also be dismissed for lack of jurisdiction under Fed. R. Civ. P. 12(b)(1) because the Hensons have failed to state a basis for federal court jurisdiction. Finally, the Complaint should be

dismissed for lack of jurisdiction because: 1) this Court lacks subject matter jurisdiction to sit in direct review of a state court judgment; 2) the Eleventh Amendment bars the Hensons' claim; 3) the Hensons' attempt to represent "those similarly situated" is inoperative; 4) the state court is immune from suits of this nature; 5) this Court should abstain under the Younger abstention doctrine, 6) the Court should abstain from this domestic relations case in the Probate Court under the general principles of comity and federalism, and 7) the Judicial Defendants did not violate Hensons' right of access to courts or right to due process. Accordingly, the Hensons have stated no facts or theory sufficient to support their claim for review in this Court and this action should be dismissed.

In further support of this motion to dismiss, the State Defendants submit a supporting Memorandum, filed herewith.

REQUEST FOR ORAL ARGUMENT

The State Defendants believe that oral argument may assist the Court in the decision of this motion, and therefore, request oral argument.

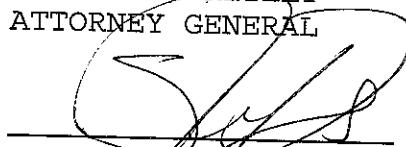
WHEREFORE, the State Defendants respectfully request that the Complaint be dismissed.

Respectfully submitted,

**ALAN LEBOVIDGE, AS COMMISSIONER OF  
REVENUE FOR THE COMMONWEALTH OF  
MASSACHUSETTS, AND CHIEF ADMINISTRATIVE  
JUSTICE OF THE MASSACHUSETTS TRIAL  
COURTS,**

By their attorney

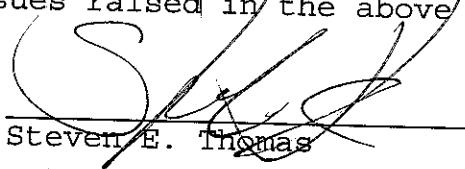
THOMAS F. REILLY  
ATTORNEY GENERAL

  
Steven E. Thomas, BBO# 496465  
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One Ashburton Place, Room 2019  
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(617) 727-2200, ext. 2085

Dated: July 1, 2004

Certification Pursuant to Local Rule 7.1(a)(2)

I, Steven E. Thomas, Assistant Attorney General, hereby certify that I have conferred with the plaintiffs' counsel in the past relative to this case. On July 1, 2004, I again attempted to confer with counsel in a good faith effort to narrow or resolve the issues raised in the above motion, but was unable to reach plaintiffs' counsel. Consequently, I have been unable to resolve or narrow the issues raised in the above motion.

  
Steven E. Thomas

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by mail (by hand) on 7/1/04.

